

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/584,165

Applicant(s)

LABARRIERE ET AL.

Examiner

Rick Palabrica

Art Unit

3663

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12/15/08 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

January 2, 2009

/Rick Palabrica/
Primary Examiner, Art Unit 3663

Continuation of 11, does NOT place the application in condition for allowance because: Applicant argues that: a) "Christiansen teaches of lateral restraints and does not teach any longitudinal securing or clamping"; b) examiner fails to provide a basis for the lateral restraints in Christiansen also inherently provides longitudinal restraint; c) "restraining" is not the same as "securing" as claimed.

The examiner disagrees.

As to argument a), the examiner has already addressed the same argument in the 8/13/08 Office action, which response is herein incorporated. As stated in said Office action, the claims do not specify any specific condition(s) under which the so-called longitudinal securing occurs. Absent such definition, the examiner interprets the term broadly and reads it on any condition of the reactor, including the time after the reactor is assembled (as shown in Fig. 5 of Christiansen) and before the reactor is operated when coolant flows through the core. Clearly, if the combination of the lower tie plate 54 and spring element 55 in Christiansen does not provide the claimed "longitudinal securing", the fuel rods 52 cannot be held in place as shown in Fig. 5. Such is not the case because if rods 52 are not longitudinally secured by the arrangement of the combination of the lower tie plate and the spring, the proper vertical and horizontal configuration as shown in Fig. 5 cannot be maintained. Note further from Fig. 5 that the shape and dimension of the bottom nozzle of fuel rod 52 relative to the aperture of lower tie plate 54 is such that the rods are "longitudinally secured" from falling longitudinally through said aperture and landing at the bottom of said tie plate, which would be disastrous. Again, applicant recites "longitudinal securing" broadly and it includes securing from longitudinal or vertical downward movement, as in Christiansen.

As to argument b), see the above response to argument a) and Fig. 5 in Christiansen, which provide basis for the examiner's position. Note also that, as presently set forth in the claims, the arrangement for laterally maintaining the adjacent longitudinal ends of the fuel rods ALSO maintains their longitudinal securing, which is the case for Christiansen.

As to argument c), the same source (i.e., Dictionary.com) that applicant uses as reference for his traverse actually supports the examiner because it clearly states that "to secure" means "to put under restraint" (see Attachment). Thus, the restraining arrangement in Christiansen is identical to or the same as the securing arrangement in the claims.

The same response, as above, applies to applicant's arguments regarding the rejection of claim 24.